

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2110.04
COMPLAINT INVESTIGATOR:	Jennifer Campbell
DATE OF COMPLAINT:	March 24, 2004
DATE OF REPORT:	April 22, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	May 25, 2004

COMPLAINT ISSUES:

Whether the MSD of Warren Township violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, failing to follow the Student's behavioral intervention plan (BIP).

During the course of this investigation an additional issue was discovered:

511 IAC 7-17-38 by failing to identify the purpose or function of the student's behavior for the functional behavioral assessment (FBA).

FINDINGS OF FACT:

1. The Student is twelve years old, in the sixth grade, and is eligible for special education and related services as a student with an emotional handicap.
2. Since October of 2003, the Student had been receiving special education and related services at a Diagnostic Day Treatment Center within another school district within the state. The former school district reported that the Student's behaviors were unpredictable and dangerous towards his peers and recommended placement, at the November 24, 2003, CCC meeting, at an Alternative Program for the rest of the semester. The Complainant did not sign the paperwork and refused the Alternative Program placement during the January 20, 2004, Annual Case Review.
3. On February 9, 2004, the Complainant initiated the Student's enrollment within the current school district. The public agency requested the Student's records from the previous school district to verify educational placement, and the Complainant completed the "Special Education Temporary Enrollment" form. The temporary enrollment form states that the local middle school (the "School") "is a temporary placement which must be followed up by a CCC meeting in the Student's assigned school after receiving records from the previous school attended." The Student was temporarily placed at the School pending an enrollment/move-in conference. The Student's first instructional day was February 11, 2004. Additional police security was positioned at the School to ensure the safety of all based on the review of the Student's records.
4. The Student's CCC met on February 17, 2004, to discuss enrollment/move-in. The CCC discussed the Student's FBA Report, which does not identify the purpose or function of the behavior of the student. The BIP was developed during the CCC. The Student's IEP calls for the Student to be in special education classrooms 100% of the time. The CCC offered a placement at the Alternative Program and

a decision was tabled so that the Complainant could learn more about the program before signing the IEP. The IEP denotes the IEP initiation date as February 17, 2004, and the Alternative Program as the IEP designated placement for the Student. The Complainant signed the IEP on February 20, 2004, placing the Student at the Alternative Program.

5. The Director states that due to the paperwork needed for the Alternative Program placement, the School was a temporary placement that provided a free appropriate public education (FAPE) to the Student. The necessary paperwork for placement was delivered to the Alternative Program on February 20, 2004. The pre-intake interview, scheduled prior to the intake to ensure that all parties understood the mission of the Alternative Program, was held on March 9, 2004. The intake was scheduled for March 11, 2004, but the Complainant changed the date of the intake to March 16th. The Complainant decided against the Alternative Program on March 17th, and was informed by the Division that the Student's placement was at the Alternative Program, not the School. The Student's first day at the Alternative Program was March 23, 2004.
6. The Complainant contends that the School did not implement the Student's IEP because the Student did complete assignments while at the School, and that the School did not contact the Complainant about this situation. The majority of the Student's assignments, provided to the Division by the Complainant, are blank and have written across them, "Student refused to do the work," with various teachers' signatures. The School asserts that the Student refused to do the work. The School did not provide documentation of Student's work.
7. The Director states that based on the FBA, three behaviors were targeted in the BIP: "appropriate communication, appropriate behaviors and following directions, and fighting." The following terms are used throughout the BIP interventions: "and/or"; "weekly/monthly"; and "daily and/or weekly. One BIP intervention is for the school educators, Counselor, and District Behavior Coordinator to monitor behavior on a regular basis. The School was unable to provide documentation to show that the individuals listed monitored the Student's behavior on a regular basis.
8. The Student was suspended on three separate occasions for a total of nine days, February 18, 19, 20, March 8, 9, 10, 11, 12, and 17, 2004, for the following misconduct: general classroom disruption/disorderly conduct; inflammatory actions; use of abusive language; general disruption of orderly educational process/threats or acts; and theft. The School was unable to provide documentation to show which BIP strategies were used to address the behavior that caused the suspensions.
9. The Student's last day at the School was March 17, 2004, which was an out of school suspension day for the Student. The Student attended the School a total of fourteen days: February 11, 12, 13, 17, 23, 24, 25, 26, 27, and March 1, 2, 3, 5, 15 and 16, 2004. March 23, 2004, was the Student's first day at the Alternative Program. The Student was suspended that day from the Alternative Program and sent to a juvenile detention center. Upon the Student's release from the juvenile detention center, the Alternative Program will suspend the Student for ten days and the Student will be discharged from the program with the rating of Failure to Adapt.

CONCLUSION

1. Findings of Fact #2 through #6 indicate the School failed to implement the Student's IEP. The IEP designates the Student's placement at the Alternative Program, not the School. Per 511 IAC 7-27-7, the School failed to provide the IEP placement within ten instructional days after the CCC parental consent to the IEP. If a parent has been an impediment in the implementation of the IEP, the public agency remains responsible for ensuring the Student receives a FAPE, and must attempt to mediate

the impasse or seek a due process hearing. Therefore, a violation of 7-27-7 is found. Findings of Fact #7 through #9 show the School did not implement the Student's BIP. Additionally, use of "and/or", "weekly/monthly", and "daily and/or weekly" constructions create automatic ambiguity. BIPs have to have sufficient clarity so that both the parent and the school personnel know what services and resources will be employed in this endeavor. Therefore, a violation of 7-27-7 (a) is found.

2. Finding of Fact #3 and #7 indicate that the School failed to identify the function or purpose of the Student's behavior in the FBA. Therefore, a violation of 511 IAC 7-17-38 is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The MSD of Warren Township shall reconvene the CCC no later than May 21, 2004, in order to:

- consider compensatory services, if any, to which the Student may be entitled to by reason of the failure to implement the IEP;
- identify the purpose or function of the Student's behavior for the FBA; and
- revise the BIP to describe how the Student's environment will be altered, identify positive behavioral intervention strategies, and specify which skills will be taught in an effort to change a specific pattern of behavior of the student.

The CCC is to provide copies of the IEP, the CCC notes, the revised FBA, and the revised BIP to the Division no later than May 28, 2004.